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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1194.

ALICE MARTENS YOUNG, ETC., *Petitioner,*

v.

CLINTON P. ANDERSON, Secretary of Agriculture of the United States, et al.

REPLY BRIEF FOR PETITIONER.

I.

The Court's decision of April 7, 1947, in *Land* v. *Dollar,* No. 207, October Term, 1946, clearly indicates that the Court of Appeals was in error as to the present import of *United States* v. *Lee,* 106 U. S. 196, and the continuing force of the latter as an authority.

In its decision January 6, 1947, in the cause at bar, the Court of Appeals ruled with respect to the *Lee* case, as follows (R. 79):

> " . . . we also think it perfectly clear that whatever now remains of the doctrine in the *Lee* case has no applicability in the case at hand, for the rule in that

case which appellant seeks to apply in this,—even on a state of facts more nearly akin to those in the *Lee* case—must, in the light of later decisions of the Supreme Court, be considered as no longer controlling. See *Morrison* v. *Work*, 266 U. S. 481 (1925); *New Mexico* v. *Lane*, 243 U. S. 52 (1917); *Louisiana* v. *Garfield*, 211 U. S. 70 (1908); *Naganab* v. *Hitchcock*, 202 U. S. 473 (1906)."

In its decision April 7, 1947, in *Land* v. *Dollar* (subsequent to filing of this Petition for Writ of Certiorari) this Court declared:

"Where the right to possession or enjoyment of property under general law is in issue, and the defendants claim as officers or agents of the sovereign, the rule of *United States* v. *Lee, supra,* has been repeatedly approved. *Cunningham* v. *Macon & Brunswick R. Co.*, 109 U. S. 446, 452; *Tindal* v. *Wesley*, 167 U. S. 204; *Smith* v. *Reeves*, 178 U. S. 436, 439; *Scranton* v. *Wheeler*, 179 U. S. 141, 152-153; *Philadelphia Co.* v. *Stimson, supra,* pp. 619-620; *Goltra* v. *Weeks*, 271 U. S. 536, 545; *Ickes* v. *Fox*, 300 U. S. 82, 96; *Great Northern Life Ins. Co.* v. *Read*, 322 U. S. 47, 50-51. That rule is applicable here although we assume that record title to the shares is in the Commission. In *United States* v. *Lee, supra,* record title of the land was in the United States and its officers were in possession. . . .

"We do not trace the principle of *United States* v. *Lee, supra,* in its various ramifications. Cases on which petitioners rely are distinguishable. This is not an indirect attempt to collect a debt from the United States by preventing action of government officials which would alter or terminate the contractual obligation of the United States to pay money. See *Wells* v. *Roper*, 246 U. S. 335; *Mine Safety Co. Forrestal*, 326 U. S. 371. It is not an attempt to get specific performance of a contract to deliver property of the United States, *Goldberg* v. *Davis*, 231 U. S. 218. It is not a case where the sovereign admittedly has title to property and is sued by those who seek to compel a conveyance or to enjoin disposition of the property, the adverse claims being based on an allegedly superior equity or on rights

arising under Acts of Congress. *Cunningham* v. *Macon & Brunswick R. Co., supra; Minnesota* v. *Hitchcock,* 185 U. S. 373; *Oregon* v. *Hitchcock,* 202 U. S. 60; *Naganab* v. *Hitchcock,* 202 U. S. 473; *Louisiana* v. *Garfield,* 211 U. S. 70; *Morrison* v. *Work,* 266 U. S. 481. And see *Stanley* v. *Schwalby,* 162 U. S. 255, 271-272.

". . . public officials may become tort-feasors by exceeding the limits of their authority. And where they unlawfully seize or hold a citizen's realty or chattels, recoverable by appropriate action at law or in equity, he is not relegated to the Court of Claims to recover a money judgment. . . . if the allegations of the petition are true, the shares of stock never were property of the United States and are being wrongfully withheld by petitioners who acted in excess of their authority as public officers. If ownership of the shares is in the United States, suit to recover them would of course be a suit against the United States. But if it is decided on the merits either that the contract was illegal or that respondents are pledgors, they are entitled to possession of the shares as against petitioners. . . . We intimate no opinion on the merits of the controversy. We only hold that the District Court has jurisdiction to determine its jurisdiction by proceeding to a decision on the merits."

II.

In its decision March 18, 1946, in *Dollar, et al.* v. *Land, Chairman,* 154 F. (2d) 307 (affirmed by this Court, April 7, 1947, No. 207), the Court of Appeals stated in part (310, 311):

"Of the many legal problems attendant upon the relationship of Government to the citizenry, probably none have been more perplexing or subbornly resistant to precise solution than those arising under the doctrine of sovereign immunity. We will not here attempt an exhaustive review of the authorities, many of which were ably argued before us in the present litigation. They illustrate the great difficulty that Courts have had in applying the oft-stated principle of immunity and

point up the absence of any controlling formula.[6] For purposes of our decision we think it sufficient to set down: (1) an analysis of the doctrine as a preliminary or 'jurisdictional' problem, and (2) an indication of the long standing policy in applying the principle to situations where the governmental undertaking is commercial and corporate in character.

"As to point (1), we are adopting the jurisdictional analysis made by Justice Stephens of this Court in his Opinion (dissenting in part, concurring in part) in *Franklin Tp. in Somerset County, N. J.* v. *Tugwell*, 66 App. D. C. 42, 85 F. 2d, 208, 229. Citing several cases[7] relied upon by the parties in the present litigation, he points out:

"Where a plaintiff asserts that an officer of the Government is acting without power and that therefore his acts are invalid, the Court in determining the preliminary jurisdictional question whether the United States is a necessary party (whether necessary parties are before a Court is, of course, jurisdictional), is confronted with a peculiar procedural problem, or impasse, arising

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"[6] The line of cases relied upon by appellants stems from *United States* v. *Lee*, 106 U. S. 196, where the federal officers were denied immunity from suit. It is true, as the appellees have urged before this court, that in the *Lee* case the government officers came into possession of the property in question by 'force and violence', that the case was an action in ejectment and materially stronger on the question of authority in the officers to do what they did. These distinctions, however, are matters of degree. If it should be found upon the trial of the present case that the defendants acted without authority in the first instance, or have by subsequent conduct overreached their statutory authority, their position becomes the same as that of the officials in the *Lee* case. (See also: *Lane* v. *Watts*, 234 U. S. 525, 540, and *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, 619, 620.) The appellees contend that it is really the interest of the United States that the appellants seek to attack, but we think that as a prerequisite to a showing that the interest of the United States had been invaded, the government's interest must first be established. . . ."

[7] "*Payne* v. *Central Pac. Ry. Co.*, 255 U. S. 228; *Northern Pac. Ry. Co.* v. *North Dakota*, 250 U. S. 135; *Wells* v. *Roper*, 246 U. S. 335; *Lane* v. *Watts*, 234 U. S. 525; *United States* v. *Lee*, 106 U. S. 196; *Transcontinental & Western Air* v. *Farley*, 71 F. 2d 288, certiorari denied, 293 U. S. 603."

> out of the fact that the determination of this question involves passing upon the very question involved in the merits . . . Since a Court must determine at the outset its jurisdiction to proceed, it is compelled to make a preliminary decision for jurisdictional purposes on the ultimate question in the suit, and this notwithstanding the fact that when the merits are heard, it may be compelled to reach an opposite conclusion. The Courts solve this problem by accepting at their face value, for jurisdictional purposes, the assertions of the complainant of want of power in the officers—unless such assertions are 'so unsubstantial and frivolous as to afford no basis for jurisdiction. . . .' Citing *Northern Pac. Ry. Co.* v. *North Dakota*, 250 U. S. 135, 39 S. Ct. 502, 63 L. Ed. 897."

In the case at bar, the contentions of Petitioner of want of power in the officers are certainly not "unsubstantial and frivolous." R. 10-13; 54-70; 81-89. See also Questions Presented, *Petition for Writ of Certiorari*, page 2, and *Brief in Support of Petition for Writ of Certiorari*, pages 15, 18, 20, 24. Accordingly, it would appear that Petitioner fully meets the controlling formula announced by the Court of Appeals, affirmed by this Court, that where a plaintiff asserts that an officer of the Government is acting without power and that therefore his acts are invalid, the Courts, where such assertions are not unsubstantial and frivolous, solve the procedural problem "by accepting at their face value, for jurisdictional purposes, the assertions of the complainant of want of power in the officers . . ."

III.

(a)

On Respondents' page 2, it is asserted that the question presented is "whether the United States of America is an indispensable party to a suit wherein the prior owner of lands seeks to have adjudicated as nullities the condemnation judgments and voluntary deeds by which the United

States acquired title to such lands from such owner." Respondents' assertion is based on the erroneous premises that (a) Petitioner and those for whom she sues are prior owners instead of present owners, (b) the deeds were voluntary, and by such deeds and condemnation judgments the United States actually acquired title. Accordingly, Respondents beg the very questions involved here.

Aside from the issue of Weeks Act constitutionality, and assuming the same at this point, it would appear that such question is as follows:

> **When officers of the United States have failed to observe the legal requirements declared by Congress to be indispensable to permit them to acquire lands in the name of the United States, is the latter a necessary party in a suit against such officers to declare their acts unlawful and grant incidental relief?**

(b)

The prayers of the Complaint are somewhat edited, and in addition are set out in reverse order, by Respondents on their page 4.

Actually, they are *ad seriatim* (R. 16, 17):

For the issuance of an injunction restraining Respondents from exercising any acts of ownership as to the lands and interests involved, and from any steps designed to offer or place the same on lease.

For the issuance of an injunction requiring the Secretary of Agriculture (a) to exercise as to such lands and interests the authority conferred upon him in the Act of July 8, 1943 (R. 52), and (b) then to quitclaim such lands and interests to petitioner, for the benefit of herself and members of the class, against refund of consideration paid by the United States.

If the preceding prayer is not granted, or if it is granted only as to (a) thereof, and the ensuing exercise of the Secretary's authority is without the effect of producing such

quitclaiming, then that the Court determine that title did not pass under the deeds and condemnation judgments, but remained with the grantors, and require Respondents to file an accounting for the period of occupancy.

Finally, upon such determination respecting title, and against payment of such net sums as may be due the United States, Respondents be required to deliver to petitioner, for cancellation, the deeds of purported conveyance now at Washington, D. C., and be further required to cooperate in correcting the records in Mississippi, to reflect the true state of the title in such lands and interests.

As asserted, footnote, Respondents' page 4, Petitioner has now abandoned the point as to the statutory duty of the Secretary of Agriculture so to quitclaim (R. 15, 16, 52). At the time of the commencement of Petitioner's suit on June 28, 1945 (R. 73), this contention was open, timely, and believed well founded. The Court of Appeals did not rule on this issue, although clearly presented (R. 15, 16, 52, 62, 88). As the time limit of ten years under the Act of July 8, 1943, for such action by the Secretary (R. 82) appears now to have run respecting the major portion of the acreage (R. 9, 10, 22, 29, 32, 39, 44, 49), Petitioner no longer urges such contention and relief, solely for that reason.

(c)

Petitioner does not concede, as asserted Respondents' pages 5 and 6 that "the Government has a record *legal* title to all of the lands *previously* individually owned by her, and to part of the Miss-Wis Corporation lands by virtue of judgments of condemnation . . .," and that "the balance of the corporation lands were *voluntarily conveyed* to the United States for an agreed consideration." (Italics supplied)

It appears merely that record title to the lands is now in the United States, as was the situation in *United States* v. *Lee*, *supra* (See this Court's decision in *Land* v. *Dollar*, April 7, 1947, which also held that the rule in *United States*

v. *Lee* is applicable in *Land* v. *Dollar* "although we assume that record title to the shares is in the Commission.") And Petitioner's fundamental contention that ownership remained in the corporation and in her, actual title never having passed (R. 13), is hardly an admission by her that lands were previously owned by her, and were conveyed to the United States. Nor is the United States in possession as holder of record title through the voluntary acts of petitioner and the corporation (R. 7; Statement of the Case (a), *Petition for Writ of Certiorari*, page 4; *Brief in Support*, pages 26, 27).

The Complaint does not ask that "the Court adjudge that the title of the United States thus acquired is a nullity" (Respondents' page 6), its basic contention being instead that actual title was never acquired (R. 13, 16). And this Court's aforementioned decision in *Land* v. *Dollar* establishes, at its page 7, the inapplicability of the decisions of this Court (including *Louisiana* v. *Garfield*, 211 U. S. 70) cited Respondents' page 6, the cause at bar also not being a case "where the sovereign admittedly has title to property and is sued by those who seek to compel a conveyance or to enjoin disposition of the property, the adverse claims being based on allegedly superior equity or on rights arising under Acts of Congress."

In *New Mexico* v. *Lane*, 243 U. S. 52, cited Respondents' page 6, the object was to take land from the United States which admittedly had title, and hence it is also inapplicable.

(d)

The United States District Court dismissed the Complaint "wholly on the ground that it is an action against the United States" (R. 70). After quoting from the inapplicable decisions of *Louisiana* v. *Garfield, supra*, and *Morrison* v. *Work, supra*, the Court of Appeals held herein that the United States is an indispensable party, and that since it had not consented to be sued, it cannot be made party, and that therefore the action was properly dismissed (R. 79).

Accordingly, there has been no ruling on (1) whether the condemnation judgments are *res judicata* on the issues of Weeks Act unconstitutionality and lack of required legislative consent, or on any contentions of (2) estoppel through acceptance of alleged benefits, or of (3) laches, or of (4) inability to maintain this suit as a class action. Such contentions were not presented in initial argument (R. 56), and are believed unimportant at this juncture and in the absence of trial upon the merits. However, as Respondents do present them here (6, 7, 8), the following is submitted:

(1)

The condemnation judgments are not *res judicata* because the proceedings in condemnation were merely preliminary to a contemplated conveyance, serving as a negotiation and also in producing a judgment to serve as "other instrument of conveyance." (Weeks Act, Section 516, R. 19) At the conclusion of such proceedings, the fundamental requirement for legislative consent still remained for compliance, and in the absence thereof, the Secretary of Agriculture was powerless to accept title. He could approve and accept, only if facts existed permitting him to do so. The duties delegated to him remain unaffected by findings in the condemnation proceedings, which could not abrogate or abridge such duties, or alter the circumscriptions as to acceptance of title, laid upon him by the Weeks Act. No Court has found, nor is it a fact, that purported acquisitions, embraced in the condemnation judgments, received the legislative consent in the form and manner prescribed in the Weeks Act, and accordingly title did not, and could not, pass, regardless of the form of the proferred instrument of conveyance.

(2)

The options were procured by the Government's agent through threat of condemnation, at inordinately low prices, and upon the assurance that all would be treated equally as to mineral rights, in that none would be permitted to re-

serve for longer than ten years, the period granted to Petitioner and the company (R. 7, 8). Recently, it has been learned that certain others whose lands in Mississippi were then so acquired, were granted mineral reservations therein for 30, 50, or 100 years, or even in perpetuity. (R. 7) There is no showing that these rights reserved to Petitioner and the company have ever been, or could have been, exercised, and in the circumstances there have been no actual benefits to accept. Petitioner offers, on behalf of herself and the others, to repay with interest the payments made, with adjustments for any improvements, revenues, or damages (R. 13, 14)

Title to real estate cannot be acquired by estoppel. *Gilcrease Oil Co.* v. *Cosby*, 132 F. 2d 790, certiorari denied. For estoppel by acceptance of benefits, the party against whom it is claimed should have acted with knowledge of the facts and of his rights (*Buffum* v. *Peter Barceloux Co.*, 289 U. S. 227). Also, the acceptance should not be induced by false representations (*Eppes* v. *Thompson*, 79 So. 611, 202 Ala. 145). Estoppel has no application to a contract which violates an express mandate of the law. *Herkner* v. *Rubin*, 126 Cal. App. 677; *Brown* v. *Columbus National Bank*, 137 Indiana 655.

An estoppel here would allow Respondents to avoid the law and a declared policy of Congress, ignore the rights of a sovereign State and of its citizens, and create an ownership in the Government in defiance of its own laws. Under such circumstances it would be without equity because against public policy.

(3)

The assertion that Petitioner waited nearly ten years to challenge the condemnation judgments or the deeds is incorrect. Her Complaint was filed June 28, 1945 (R. 73), and her Amended Complaint July 12, 1945 (R. 2). She received no moneys until 1937 (R. 14). Payments to the Company

were received in 1936 and 1937, the last about December 31, 1937 (R. 13).

The rights to the 377.86 acres, owned by Petitioner individually, purportedly expired July 1, 1944 (R. 9, 10). However, the rights in the remaining 18,113 acres, were not due to expire until July 1, 1945 (R. 9, 10), and Petitioner's proceeding was instituted prior thereto (R. 2). The judgments of condemnation provided for the Court's retention of jurisdiction for any further necessary orders (R. 39, 43, 49).

Laches cannot be set up as defense to validate a contract which is against public policy. *Bartlett* v. *Doherty,* 10 F. Supp. 465 (N. H.), 81 F. 2d 920, certiorari denied, *Doherty* v. *Knowlton,* 298 U. S. 676.

(4)

A class action, as here, is authorized by Federal Rule of Civil Procedure 23. Respondents cannot indulge in presumptions of additional facts, but are restricted to those alleged, and deemed under the motion to dismiss to be true.

Where the interests of persons not joined are of the same class as the interests of those joined, and where it is considered that the latter fairly represent the former in the litigation, in which all will have a common interest, the Court will proceed to a decree. *Hansberry* v. *Lee,* 311 U. S. 32. The class suit was an invention of equity to enable proceeding to a decree in suits where the number interested is so great that their joinder as plaintiffs is impracticable. *Hansberry* v. *Lee, supra.*

Respondents do not show, nor affirmatively contend, that Petitioner is not adequately representative.

At the time of the dissolution of the Company in 1938, Petitioner owned about 40 per cent of the outstanding capital stock. (R. 3) She can prove that since the purported conveyance of the lands, their value has increased very substantially, from which it follows that the others holding the remaining stock on such dissolution, or their transferees

would benefit materially if the relief were granted. She can also establish powers of attorney, authorizing this suit, from almost all of such others, or their transferees.

(e)

Respondents contend, page 8, that the constitutional issue is not presented by the pleadings. But see Paragraph XII of the Complaint (R. 10, 11), and argument in the District Court (R. 57). They further assert (8, 9) that it is not alleged that the lands are not of the character to promote navigation. But see final clause, Paragraph XII (R. 11). It is the mineral interests which are importantly involved. In argument below, Petitioner's counsel emphasized that these purported acquisitions were for non-governmental purposes (R. 57). On a trial, Petitioner will be prepared to prove that the lands are not of a character to promote navigation, and any further desired allegations can then be added under Federal Rule of Civil Procedure 15.

(f)

The Act of May 29, 1928, c. 915, 45 Stat. 1010, did not dispense with State consent, as Respondents assert (9, footnote), but merely suspended it as to unacquired lands in the Alabama National Forest, from May 29, 1928, until December 31, 1930. It appears from Senate Report 1071, and House Report 1708, 70th Congress, 1st Session, that an original consent act had been unintentionally repealed by a later act, which was not discovered until 1928 when the Alabama Legislature was out of session until 1931; that in order that pending negotiations for certain acquisitions could be consummated before then in accordance with a program, without calling the Legislature into special session, the State Forestry Commission, the Governor being Chairman, approved the form of a resolution for temporary waiver of the legislative consent requirement, and transmitted copies to the State's Congressional delegation, with

request to secure its enactment by Congress, which was thereafter done; that the initiative came from Alabama, to avoid convening special session, as so appears in the above reports, the waiver being in effect that of Alabama, not of Congress. See also letter, April 24, 1928, from the Secretary of Agriculture to the Senate Committee on Agriculture and Forestry, embraced in aforementioned Senate and House Reports.

In attempting to differentiate this case from *United States* v. *Lee,* 106 U. S. 196, Respondents state (10) that Plaintiff's pleadings in the latter case did not acknowledge any interest of the United States in the property, such interest being asserted by the Defendants. A parallel situation exists here, Petitioner's Complaint fundamentally alleging that the United States has no interest in these lands (R. 13, Paragraph XVI), while Respondents assert otherwise in argument. In the *Lee* case, record title was in the United States and its officers were in possession, as is the situation at bar. The question of title was also necessarily determined in the *Lee* case, it having been found on trial that the United States had acquired no title under the tax sale proceedings, 106 U. S. 196, 204.

In *Land v. Dollar, supra,* this Court ruled further that "if it is decided on the merits either that the contract was illegal or that the Respondents are pledgors, they are entitled to possession of the shares as against petitioners," any joinder of the Government then becoming unnecessary. Such rule should apply in the case at bar if it is decided at trial on the merits that, as alleged in the Complaint, title "remained in said Miss-Wis Timber and Land Co. as to its said lands, and in plaintiff as to her said lands." (R. 13, Paragraph XVI)

Respondents assert, page 11, that Petitioner seeks relief not against individual defendants but an adjudication "that these judgments and deeds *of the United States,* are void," and that this Court's decision in *Land* v. *Dollar, supra,* is inapplicable as that case "did not present an attempt to

cancel deeds or judgments conveying real property to the United States." But such assertions again beg the fundamental question whether the above papers are actually judgments and deeds of the United States, and served to convey any interest at all.

It is asserted finally (Respondents' page 11) that the type of relief requested answers of itself the question whether this is in fact a suit against the United States—that "the rights of the United States are the only rights sought to be put in issue." Similar contention was made in *Dollar* v. *Land, supra,* and in its decision, March 18, 1946 (affirmed, this Court, April 7, 1947), the Court of Appeals in footnote 6, made the following ruling, applicable also at bar:

> " . . . The appellees contend that it is really the interest of the United States that the appellants seek to attack, but we think that as a prerequisite to a showing that the interest of the United States had been invaded, the government's interest must first be established. . . ."

Respectfully submitted,

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